BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE M.THANIKACHALAM

Criminal Appeal Nos.266 of 2004
and 46 of 2005

Crl.A.No.266 of 2004:

1.Natarajan
2.Suresh

... Appellants/
Accused 1 & 2

vs.

State of Tamil Nadu
rep. by Inspector of Police,
Poraiyur Police Station,
Nagapattinam District.

... Respondent

Crl.A.No.46 of 2005:

K.Murali

... Appellant/
Accused No.3

vs.

State by
Inspector of Police,
Poraiyur Police Station,
Nagapattinam District.
(Cr.No.424/99)

... Respondent

Criminal Appeals filed under Section 374 of the Code of Criminal Procedure against the judgment of the learned District and Sessions Judge, Nagapattinam dated 8.1.2004 in Sessions Case No.293 of 2002.

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Crl.A.No.266 of 2004:
For Appellants : Mr.R.Shunmugasundaram, Sr. Counsel
for M/s.N.Chandrasekaran
For Respondent : Mr.N.R.Elango,
Additional Public Prosecutor

Crl.A.No.46 of 2005:
For appellant : Mr.M.Venkataraman, Sr.Counsel
for M/s.C.Vijayakumar& P.Pugalenthi
For Respondent : Mr.N.R.Elango,
Additional Public Prosecutor

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JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

The appellants in Crl.A.No.266 of 2004 are the accused 1 and 2 and the appellant in Crl.A.No.46 of 2005 is the 3rd accused in Sessions Case No.293 of 2002 on the file of learned District and Sessions Judge, Nagapattinam, and questioning the correctness of judgment of conviction and sentence dated 8.1.2004 rendered in the above said sessions case, they have preferred the respective appeals.

2. Since both the appeals arise out of the same judgment, we shall dispose of the appeals by this common judgment. For the sake of convenience, we shall refer the parties with name, as arrayed in the judgment under appeal.

3. All the accused along with Murugan @ Balamurugan, Ravisankar and Mariappan, due to previous enmity with the deceased Ramasamy Thevar, in execution of the criminal conspiracy that took place on 15.10.1999 at 8.00 p.m. among Natarajan, Suresh and Mariappan at Ravisankar's lathe shop, on 16.10.1999 at 7.00 a.m. when the deceased Ramasamy Thevar was entering Sri Rajagopalasami Perumal temple, Sri Thirinenthira Thajapujaveera Anjeneyar Temple at Ananthamangalam, attacked him with aruval and knife, with the intention to murder and caused his instantaneous death and thereby committed the offence punishable under sections 120(B), 302, 302 read with 109 IPC.

4. Out of six accused persons, the accused Mariappan was reported dead. Of the accused, the accused Murugan @ Balamurugan, who was ranked as 4th accused, remained absconded and so, the trial Judge split up the case against him and numbered it as S.C.No.226 of 2003, which was also disposed of by the trial Judge by judgment of even date, convicting the said accused Murugan @ Balamurugan, who has filed the appeal in Crl.A.No.45 of 2006, which is also disposed of by us today by a separate judgment.

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5. The prosecution case, in brief, is as under:

5.1. The deceased Ramasamy Thevar was a resident of Mayiladuthurai. He was the Town Secretary of A.D.M.K., a political party and the Chairman of Land Development Bank. He was also the President of Rickshaw Pullers' Association. P.W.7 Rajeswari is his wife. P.W.8 Mahalingam was his driver.

5.2. There were frequent quarrels between the brother-in-law of Ramasamy Thevar, by name, Girisankar (since died) and the accused party. P.W.19, when he was the Sub Inspector of Police, Mayiladuthurai on 21.4.1998 registered a case against one Giri Shankar and Mathiazhagan, relatives of Ramasamy Thevar on the complaint given by Balamurugan, one of the accused in this case in crime No.444 of 1998 under sections 147, 148, 341, 323, 324, 459 and 307 IPC.

5.3. The deceased Ramasamy Thevar used to tell his wife P.W.7 that since the criminal case filed charging him of murder of one Duraikannu, a close associate of the first accused Natarajan, ended in acquittal, he expected problems at the hands of the 1st accused Natarajan.

5.4. On 16.10.1999 at 6.00 a.m., the deceased, along with P.W.1 Muniandi, P.W.2 Ramu, P.W.3 Suriyanarayanan, P.W.8 Mahalingam and others went in a TATA Sumo car to Sri Anjaneyar Temple at Ananthamangalam. P.W.4 Dharmadoss drove the car. They reached the temple at about 7.00 a.m. Ramasamy Thevar was going to the temple about 10 ft. ahead of others. When Ramasamy Thevar was about to enter the temple, 1st accused Natarajan, 2nd accused Suresh, 3rd accused Murali and one Balamurugan, who is the accused in other case, armed with weapons, came and attacked Ramasamy Thevar indiscriminately. The 1st accused cut Ramasamy Thevar with aruval on his left head and shoulder. The 2nd accused Suresh cut Ramasamy Thevar on his back with aruval. The 3rd accused Murali stabbed Ramasamy Thevar on his front left side. Since the accused threatened, the persons accompanied Ramasamy Thevar stayed away. Then, all the accused persons left the scene in two cars. Ramasamy Thevar was found dead on the spot with cut injuries.

5.5. One Mathiazhagan, a relative of the deceased, who died subsequently, went to Police Station to give complaint. P.Ws.3 and 4 went to inform the relatives of the deceased. P.W.12, the person collecting fees for parking cars at the temple, saw the deceased lying dead. Being informed, P.W.7 wife of the deceased went to the scene and saw the dead body of Ramasamy Thevar.

5.6. On 16.10.1999 at 8.00 a.m., P.W.20 Inspector of Police registered a case in Crime No.424 of 1999 under sections 147, 148 and 302 IPC on the basis of complaint Ex.P-13 given by Mathiazhagan.

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He prepared Ex.P-14 printed F.I.R. and forwarded the same to the Court concerned through P.W.17, Head Constable, who handed over the same to the Judicial Magistrate, Tiruvarur since the jurisdictional Magistrate, viz., Judicial Magistrate No.2, Mayiladuthurai was on leave.

5.7. P.W.20 prepared Ex.P-1 observation mahazar and drew rough sketches, Exs.P-15 and P-16. He arranged P.W.13 Karthikeyan to take photographs of the scene. He conducted inquest over the dead body in the presence of panchayatdars and prepared Ex.P-17 inquest report. He issued Ex.P-5 requisition for postmortem through P.W.18 Head constable.

5.8. P.W.15, Assistant Surgeon attached to the Government Hospital, Mayiladuthurai, on receipt of Ex.P-5 requisition, conducted postmortem over the dead body of the deceased on 16.10.1999 at 12.30 p.m. and found the following injuries:

1. A gaping incised wound extending from the left side of the vault of the skull upto the left half of the occipital bone 23 cm long x 6 cm breadth. This would has pierced the skull with fracture of vault of skull. The skull bones fractured are left temporal, left parietal and left half of occipital bone. The fractured pieces of bones are found embedded in the brain matter. Brain is found flowing through the gaping wound.

2. A gaping incised wound extending from the back of left ear cutting across left side of neck, upto middle of left side of neck ending over the medial end of left clavicle 23 cm x 4 cm size. This wound has cut all the deep structures intervened, i.e., muscles, and great vessels of left side of neck.

3. A gaping incised wound over the top of left shoulder cutting across the medial end of left scapula, running over the middle of scapula upto mid axillary line of left axilla on the left side of the back 18 cm x 5 cm size. This wound has cut left scapula in the middle exposing the deep muscles of left side of the back and head of left humerus of shoulder(L).

4. A gaping incised wound over the back of the neci extending from the back of left ear upto middle of the back of the neck on the left side 16 x 5 cm size. This injury has cut the certical spine with spinal card at the level of C3, C4. All the deep structures on the left side of the neck is found cut on the side.

5. An incised wound of 3 cm x ½ cm muscle depth over the outer aspect of left forearm.

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6. A stab injury of 2 cm in length, elliptical in shape seen at the level of 6th intercostal space over mid-axillary line on the left lateral side of the chest. On dissecting, the wound passes deeply inside, traversing in between 6th & 7th rib (L) and injured. Left lung left thoracic cavity contains about 100 ml. Of clotted blood.

7. An incised wound over the left side of chest, 5 cm. below the left clavicle size 3 cm x 2 cm muscle depth.

8. An incised wound of 6 cm x 1 cm muscle depth over (L) gluteal region.

9. An incised wound of 6 cm x 1 cm muscle depth over (L) gluteal region. An incised wound of 3 cm x ½ cm muscle depth over (L) gluteal region besides the wound No.8.

10. An incised wound of 3 cm x 2 cm muscle depth over middle of front of left thigh.

11. An incised wound of 2 cm x ½ cm. muscle depth over centre of middle of back.

12. An abrasion of 2 cm x 1 cm over (R) knee.

P.W.15 issued Ex.P-6 postmortem certificate. He was of the opinion that the deceased would appear to have died of shock and haemorrhage due to the injuries sustained.

5.9. P.W.20 received the dresses worn by the deceased (M.Os.5 to 7) produced by P.W.18 Head constable. On 18.10.1999 he recorded the voluntary statement of P.W.6 Kadher on the basis of which he arrested the 5th accused Ravisankar and the accused Mariappan, since deceased and sent them to judicial custody. He took police custody of the accused Natarajan and Suresh who had surrendered in the Cuddalore Court. He recorded the confession statements of the said accused, but, as per their statements, no weapon was found to be recovered. He gave requisition to record the statement of witness Kadher (P.W.6) and also to conduct test identification parade. P.W.14 Judicial Magistrate recorded Ex.P-3 statement of P.W.6 Kadher under section 164 Cr.P.C. She also conducted test identification parade to identify the 3rd accused Murali and the accused Murugan @ Balamurugan. The proceedings of identification parade are Ex.P-4.

5.10. P.W.20 took the 3rd accused Murali and the accused Balamurugan into police custody and recorded their statements as per which he seized M.O.8 aruval and M.O.9 knife. He took steps to subject the M.Os. to chemical examinations. He examined the

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witnesses and recorded their statements. After completing the investigation, he laid the final report on 12.1.2000.

5.11. Since the accused denied the charges, they were tried in S.C.No.293 of 2002 on the file of learned trial Judge.

5.12. On behalf of the prosecution, P.Ws.1 to 20 were examined and Exs.P1 to P21 and material objects M.Os.1 to 9 were marked. Though P.Ws.3 and 5 were examined to speak about the occurrence, P.W.6 was examined to speak about the conspiracy and P.Ws.10 and 11 were examined for recovery of material objects, they turned hostile.

6. When the accused were questioned under Section 313 Cr.P.C. in respect of the incriminating circumstances found against them, they denied the same. The accused neither examined any witness, nor marked any document on their side.

7. On consideration of the oral and documentary evidence available on record, the learned Sessions Judge convicted the accused 1 to 3, viz.,Natarajan, Suresh and Murali under section 302 IPC and sentenced each of them to undergo imprisonment for life with a fine of Rs.2,000/- and default sentence. He found the accused Natarajan and Suresh not guilty under section 120(B) IPC and acquitted them. He also found the accused Ravisankar not guilty under sections 120(B) and 302 read with 109 IPC and acquitted him. Exasperated by the above conviction and sentence, the accused Natarajan, Suresh and Murali have come forward with these appeals.

8. The point for consideration in the appeals is whether the prosecution has brought home the guilt of the accused beyond all reasonable doubts.

9.1. The submissions of Mr.R.Shunmugasundaram, learned senior counsel appearing for the accused Natarajan and Suresh are as under:

(i) The motive is a vague one. There is no relationship or connection between the accused and the deceased. The accused herein are not witnesses in the earlier criminal case in which the deceased Ramasamy Thevar was acquitted;

(ii) P.Ws.1, 2 and 4 could not be present in the scene of occurrence as their names do not find a place in the first information report. Further, the names of P.Ws.2 and 4 are not found in columns 3 and 4 of the inquest report, Ex.P-17. If that be so, the only person who could have accompanied the deceased was Mathiazhagan, who died subsequently;

(iii) The first information report reached the Court only at 5.00 p.m. on 16.10.1999. The inquest report did not reach the Court on the day when it was prepared;

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(iv) After the attack, when the deceased fell on the floor, the normal reaction of the persons who allegedly accompanied the deceased would be to lift him, but there were no bloodstains on their dresses. It is not the case of prosecution that they chased the accused;

(v) The evidence of P.W.1 is not consistent as he is only referring to P.W.8 and not P.W.4 as driver;

(vi) No weapons were recovered on the basis of statements given by the 1st accused Natarajan and the 2nd accused Suresh; and

(vii) When the claim of prosecution is that the accused left the scene in two cars, no steps were taken to trace out the cars.

9.2. Summing up, Mr.R.Shunmughasundaram, learned senior counsel submits that the prosecution case is a fabricated story and the accused Natarajan and Suresh are not responsible for the death of the deceased Ramasamy Thevar.

10. Mr.M.Venkataraman, learned senior counsel appearing for the 3rd accused Murali submits that in respect of the occurrence that took place in the year 1998, the accused Balamurugan gave complaint against Mathiazhagan and Girishankar, that the accused Murali and P.W.1 are residents of same street, that the complainant Mathiazhagan was residing in the adjacent street and that if the complainant Mathiazhagan witnessed the occurrence, he would have mentioned the names of the accused Murali and Balamurugan in the first information report itself, but the 3rd accused Murali was implicated only on 5.11.1999. His further submission is that the overt acts attributed to the 3rd accused Murali are not found mentioned in the first information report.

11. On the other hand, the learned Additional Public Prosecutor submits that the presence of all witnesses is mentioned in the first information report and the statements of witnesses also reached the Magistrate's Court along with the inquest report and hence, the mere non-mentioning of names of witnesses in the inquest report is not fatal. He further submits that the names of accused 1 & 2, viz., Natarajan and Suresh are mentioned in the first information report and though there was a delay in the first information report reaching the Court, the delay has been properly explained and hence, the trial Court has correctly convicted and sentenced the accused and there is no need to interfere with the judgment of the trial court.

12. We have given our careful consideration to the submissions made by the learned counsel on either side and also perused the records.

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13. Before going into the arguments advanced by the learned senior counsel, we feel it appropriate to have an overview of the factual aspects of the matter.

14. As already observed, the accused Natarajan, Suresh and Murali are alone before us as the case against the accused Murugan @ Balamurugan was split up which also ended in conviction, against which a separate appeal has been preferred. The leftover accused Ravishankar was acquitted.

15.1. Undisputedly, the deceased was a local political person, affiliated to a particular political party. He was the Chairman of Land Development Bank and the President of Rikshaw Pullers' Association. The motive for the occurrence is said to be the earlier incident in which one Duraikkannu was murdered. In that case, the deceased in the present case was the accused and that case ended in acquittal. That incident took place about 15 years prior to the date of present occurrence.

15.2. Further, it is the evidence of P.W.7, wife of the deceased that her husband used to tell her that since the earlier murder case ended in acquittal, he expected problems from the accused Natarajan as he was close to Duraikkannu who was the deceased in the earlier case in which the deceased Ramasamy Thevar was the accused.

15.3. P.W.8 Mahalingam, driver of the deceased Ramasamy Thevar, in his evidence has stated that there were frequent quarrels between the accused in this case and one Girisankar (subsequently died), brother-in-law of Ramasamy Thevar. The said Girisankar is the brother of Mathiazhagan (also subsequently died), who is the complainant in this case. It is the case of prosecution that there were quarrels between the accused party and Girisankar and to substantiate the same, P.W.8, then Sub Inspector of Police, Mayiladuthurai has been examined. P.W.8 in his evidence has stated that Balamurugan, one of the accused in this case, gave a complaint on 21.4.1998 against Girisankar on the basis of which a case in crime No.444 of 1998 under sections 147, 148, 341, 323, 324, 459 and 307 IPC was registered.

15.4. Though it is elicited in the cross examination of the witnesses that the deceased Ramasamy Thevar was a rowdy and history-sheeter and the accused in this case were not witnesses in the earlier murder case, the prosecution has proved by evidence of above witnesses that there were quarrels between the accused party and relatives of the deceased Ramasamy Thevar and because of his acquittal in the earlier murder case, Ramasamy Thevar apprehended some problems at the hands of accused in this case. We are therefore of the view that the prosecution has proved the motive to the above extent.

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16. Concededly, the deceased Ramasamy Thevar was done to death at the entrance of temple at Ananthamangalam. P.W.15, the doctor who conducted postmortem found as many as 12 injuries on the body of the deceased and most of them are cut injuries. P.W.15 was of the opinion that the deceased would appear to have died of shock and haemorrhage due to the injuries caused. The injuries found on the body of the deceased as evident from Ex.P-6 postmortem certificate and the medical evidence as spoken to by P.W.15 unmistakably go to show that the death was by homicidal violence.

17.1. To speak about the occurrence, the prosecution has examined five witnesses. Except P.Ws.1, 2 and 4, no one supports the case of prosecution, as P.Ws.3 and 5 turned hostile. P.Ws.1, 2 and 4 are said to have accompanied the deceased at the time of occurrence. According to them, they proceeded to Ananthamangalam Anjaneyar temple in a car. P.Ws.1,2 and 4 in their evidence have stated that the deceased was walking towards the temple when others were following him at a distance of 10 ft. and when Ramasamy Thevar was about to enter the temple, the accused Natarajan, Suresh, Murali and Balamurugan came armed with aruval and knife and attacked him indiscriminately.

17.2. It is evident from the deposition of P.W.1 that the accused Murali stabbed the deceased on his left front side. It is the evidence of P.W.2 that the 1st accused Natarajan cut the deceased on his left head and shoulder, the 3rd accused Murali stabbed him on his flank, the accused Balamurugan cut him with aruval on his hip and flank and the 2nd accused Suresh also cut him. P.W.4 has also deposed that the 1st accused Natarajan cut the deceased with aruval, the 2nd accused Suresh cut him with aruval on his back, the 3rd accused Murali stabbed him and the accused Balamurugan cut him with aruval.

17.3. All the above witnesses have further stated that since the accused threatened, they did not go near them and then, the accused left the scene in cars. Though P.W.3 who was examined to speak about the occurrence, turned hostile, from his evidence, it is deducible that P.Ws.1, 2 and 4 accompanied the deceased and at the time of occurrence, they were present in the scene. P.W.7 wife of the deceased, being informed by P.Ws.3 and 4, visited the scene and saw the deceased lying dead. P.W.15 doctor, during autopsy, found 12 injuries on the head, shoulder, flank and back of the deceased and the medical evidence corroborates the overt acts attributed to the accused as spoken to by P.Ws.1,2 and 4. It is therefore clear that the accused Natarajan, Suresh and Murali inflicted the injuries on the deceased causing his instantaneous death.

18.1. Let us now consider the submissions of learned counsel for the appellants. Mr.R.Shunmugasundaram, learned senior counsel submitted that there is no relationship or connection between the

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accused and the deceased and the accused herein were not witnesses in the earlier criminal case in which the deceased Ramasamy Thevar was acquitted and hence, the motive is a vague one. It is true that the accused in this case were not examined as witnesses in the earlier murder case in which the deceased Ramasamy Thevar was the accused. But, it is evident from P.Ws.7 and 8 that the deceased Ramasamy Thevar was fearing his life at the hands of the accused and there were quarrels between the relatives of the deceased and the accused party.

18.2. Further, motive for doing a criminal act is generally a difficult area for the prosecution and it is not possible for the prosecution in each and every case to unravel the full dimension of the mental disposition of an offender towards the person whom he offended. Motive is the emotion which impels man to do a particular act. While appreciating the evidence Courts must keep in mind the realities of life. The Courts cannot ignore the erosion in the values of human life which have become a common feature of the present time people who are not afraid now in committing heinous crimes like murder, even on small and trivial matters [vide: Anil v. State of U.P. 2002 Crl.L.J.2694 at 2702].

18.3. In the instant case, the prosecution has proved through P.Ws.7 and 8 that the deceased Ramasamy Thevar was fearing his life at the hands of the accused and there were quarrels between the relatives of the deceased and the accused party and therefore, the submission of learned senior counsel that the motive is a vague one is liable to be rejected.

18.4. According to the learned senior counsel, P.Ws.1, 2 and 4 could not be present in the scene of occurrence as their names do not find a place in the first information report and the names of P.Ws.2 and 4 are also not found in columns 3 and 4 of the inquest report, Ex.P-17 and hence, the person who would have accompanied the deceased was Mathiazhagan who died subsequently and in the absence of his evidence, the occurrence remains unproved. A reading of Ex.P-13, first information report, given by Mathiazhagan shows that P.Ws.1 and 2 accompanied the deceased at the time of occurrence and P.W.4 drove the car. Even though the evidence of Mathiazhagan is not available to the prosecution, the persons whose names are found mentioned in the first information report were examined as witnesses, who have spoken about the occurrence and the overt acts attributed to the accused.

18.5. In the first information report, it is mentioned that the 1st accused Natarajan, the 2nd accused Suresh and 5 or 6 persons, armed with weapons, attacked the deceased. It is true that the name of the accused Murali is not mentioned in Ex.P-13, but, in the identification parade conducted by P.W.14 Judicial Magistrate, P.Ws.1, 2 and others identified the 3rd accused Murali. Therefore,

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all the accused have correctly been roped in by the prosecution. Though in Ex.P-17 inquest report the names of P.Ws.2 and 4 are not found mentioned, as rightly pointed out by the learned Additional Public Prosecutor, their names were mentioned in the first information report and their statements reached the Judicial Magistrate's Court along with the inquest report. The non-mentioning of names of P.Ws.2 and 4 in the inquest report cannot be termed to be fatal to the prosecution case, as it is not at all a requirement in law to mention the details of F.I.R., names of accused or the names of eye-witnesses or the gist of their statements in inquest report, nor is the said report required to be signed by any eyewitness[vide: Radha Mohan Singh v. State of U.P. (2006) 1 SCC (Cri)661].

18.6. The next point urged by the learned senior counsel is the delay in the first information report reaching the Court. According to the learned senior counsel, the first information report reached the Court only at 5.00 p.m. on 16.10.1999. It is seen from Ex.P-13 first information report that it was received by the police on 16.10.1999 at 8.00 a.m. P.W.17 is the Head Constable who handed over the first information report to the Court. According to him, he went to the jurisdictional Magistrate's Court, viz., Judicial Magistrate No.2, Mayiladuthurai at 8.45 a.m., but, since the officer was on leave, he handed over the first information report to the Judicial Magistrate, Tiruvarur at about 4.00 p.m. which is 30 k.m. away from Mayiladuthurai. His evidence would go to show that because of the murder in the instant case, buses were not running and so, he walked and travelled in a cycle to reach Tiruvarur. Therefore, as rightly pointed out by the Additional Public Prosecutor, though there was a delay in the first information report reaching the Court, the delay has been explained by the prosecution.

18.7. Mr.R.Shunmugasundaram, learned senior counsel further contended that after the attack, when the deceased fell on the floor, the persons who allegedly accompanied the deceased should have lifted the deceased and in that process, there would have been bloodstains on their dresses, but there were no bloodstains on their dresses. In Ex.P-13 first information report and in the evidence of P.Ws.1, 2 and 4, it is stated that the accused threatened them and hence, they did not go near the accused out of fear and only after the accused left the scene, they went near the deceased and found him dead. Further, except Mathiazhagan (since deceased), all other persons, who are said to have been present in the scene, are not relatives of the deceased and they would not have touched the dead body of the deceased to avoid the litigation that would follow. After the attack, if the deceased was still alive, the witnesses could have been expected to lift him to provide medical aid, but they saw the deceased lying dead. In such circumstances, they could not be expected to lift the dead body. Moreover, the evidence of P.Ws.1, 2 and 4, which are credible and cogent, show that they were present at the scene of

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occurrence and witnessed the occurrence. Therefore the above contention of the learned senior counsel is not acceptable.

18.8. Learned senior counsel then pointed out that P.W.1 in his evidence has referred to P.W.8 and not P.W.4 as driver whereas the case of prosecution is that it is P.W.4 who drove the car. It is true that P.W.1 has referred the name of P.W.8 as driver, but, it is not the evidence of P.W.1 that P.W.8 drove the car at the time of occurrence. According to P.W.1, P.W.8 accompanied them. From the evidence of P.Ws.2 and 4, it is clear that P.W.4 alone drove the car. In Ex.P-13 first information report also it is stated that P.W.4 drove the car. Hence, the discrepancy pointed out by the learned senior counsel, which is minor in nature, is not fatal to the prosecution case.

18.9. The next contention of learned senior counsel is that no weapons were recovered on the basis of statements given by the 1st accused Natarajan and the 2nd accused Suresh. The investigating officer P.W.20 has stated that the 1st accused Natarajan and the 2nd accused Suresh gave confession statements undertaking to produce the weapons, but when the police party searched for the weapons at the place located by the said accused, the weapons were not available. Probably, the weapons concealed by the accused Natarajan and Suresh might have been taken by somebody else. However, it is a defect in the investigation which would not affect the prosecution when the evidence of P.Ws.1, 2 and 4 are credible and cogent roping the accused in the crime, as it is settled that even if the investigation is defective, that pales into insignificance when ocular testimony is found credible and cogent and in the case of a defective investigation the court has to be circumspect in evaluating the evidence, but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective [vide: Dhanaj Singh v. State of Punjab (2004) 3 SCC 654].

18.10. The next point urged by the learned senior counsel that no steps were taken to trace out the cars in which the accused allegedly left the scene is also a defect in the investigation which would not affect the prosecution case, as already observed.

19.1. The contention of Mr.M.Venkataraman, learned senior counsel appearing for the 3rd accused Murali is that the name of 3rd accused Murali does not find a place in the first information report. According to him, the 3rd accused Murali and the complainant Mathiazhagan are residents of same street and if that be so, the complainant would have named the 3rd accused in the first information report itself.

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19.2. As already observed, in the the first information report it is stated that besides the accused Natarajan and Suresh, 5 or 6 persons attacked the deceased. Though the complainant Mathiazhagan and the accused Murali are residents of same street, the complainant might not have known the name and other details of the accused Murali. It is not the case of accused that the accused Murali and the complainant were known to each other.

19.3. Further, in the identification parade conducted by P.W.14, the complainant Mathiazhagan, P.Ws.1, 2 and others identified the accused Murali. Then only, the name of 3rd accused Murali was included in the case. Therefore, it cannot be stated that non-mentioning of the name of 3rd accused Murali in the first information report is fatal to the prosecution case.

19.4. The overt acts attributed to the 3rd accused Murali have been spoken to by P.Ws.1, 2 and 4, as corroborated by the medical evidence. In the first information report, Ex.P-13, it is stated that besides the 1st accused Natarajan and the 2nd accused Suresh, the deceased was also attacked by other accused, who were subsequently identified in the identification parade. When the ocular testimony is firm and cogent and the accused had been identified in identification parade to whom overt acts were attributed by the ocular witnesses, the submission of learned senior counsel for the 3rd accused Murali that the name of 3rd accused is not mentioned in the first information report does not sound good as the complainant cannot be expected to narrate each and every overt act of the accused. In Rattan Singh v. State of H.P. (1997) 4 SCC 161, the Apex Court held that,

> "Criminal courts should not be fastidious with mere omissions in the first information statement, since such statements cannot be expected to be a chronicle of every detail of what happened, nor to contain an exhaustive catalogue of the events which took place. The person who furnishes first information to authorities might be fresh with the facts but he need not necessarily have the skill or ability to reproduce details of the entire story without anything missing therefrom. Some may miss even important details in a narration. Quite often the police officer, who takes down the first information, would record what the informant conveys to him without resorting to any elicitatory exercise. It is voluntary narrative of the informant without interrogation which usually goes into such statement. So any omission therein has to be considered along with the other evidence to determine whether the fact so omitted never happened at all."

Keeping this in view, the submission of learned senior counsel that the name of 3rd accused is not mentioned in the first information report stands rejected.

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20.1. Considering the evidence available on record, we are of the considered view that the accused Natarajan, Suresh and Murali attacked the deceased Ramasamy Thevar in the time and manner as alleged by the prosecution and the prosecution has proved the guilt of the accused beyond reasonable doubts. However, the charge framed against the accused Natarajan, Suresh and Murali is one under section 302 IPC. It is the evidence of P.Ws.1, 2 and 4 that the above accused indiscriminately attacked the deceased. The medical evidence would also show that the deceased would appear to have died of shock and haemorrhage due to the injuries sustained, from which it can be safely concluded that the injuries cumulatively caused the death of the deceased, which would attract section 34 IPC. Hence, the accused Natarajan, Suresh and Murali are to be punished under section 302 read with 34 IPC and not under section 302 IPC independently. Probably, the trial Court rendered a finding that each and every injury would appear to have caused the death only to bring the above accused under section 302 IPC., whereas the medical evidence is otherwise.

20.2. In Gurpreet Singh v. State of Punjab (2005 12 SCC 615, the Apex Court held that when there is evidence that the accused shared the common intention to cause death of the victim, the conviction of appellants could be altered from section 302 to 302 read with 34 IPC and the accused are not prejudiced in their defence merely because of non-framing of the said charge. In the present case, the prosecution has proved that the accused Natarajan, Suresh and Murali attacked the deceased indiscriminately and all the injuries cumulatively caused the death of the victim. The manner by which the above accused executed the attack and the overt acts, as spoken to by the ocular witnesses would prove the common intention of the accused in committing the crime. When the prosecution has proved the common intention by the ocular testimony, it cannot be stated that the accused are prejudiced in their defence by the alteration of charge into one under section 302 read with 34 IPC. We are therefore of the view that the charge framed against the accused Natarajan, Suresh and Murali should be one under section 302 read with 34 IPC and the prosecution has proved the guilt of the accused under section 302 read with 34 IPC beyond all reasonable doubts. Accordingly, we hold that the accused Natarajan, Suresh and Murali are liable to be convicted under section 302 read with 34 IPC, and not under section 302 IPC simpliciter and that the sentence imposed by the trial Court remains the same.

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In the result, with the above alteration in section of Code under which the accused Natarajan, Suresh and Murali are convicted, both the appeals stand dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

na.

Copy to:

1. The District and Sessions Judge,
Nagapattinam.

2. The District Collector,
Nagapattinam.

3. The Director General of Police,
Chennai.

4. The Superintendent,
Central Prison, Tiruchirappalli.

5. The Public Prosecutor
High Court, Madras.

6. Inspector of Police,
Poraiyur Police Station,
Nagapattinam District.

1 cc to Mr.C. Vijayakumar, Advocate, Sr. 48287
1 cc to Mr.N. Chandrasekaran, Advocate, Sr. 48281

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